

2925

ruled on 22-2-96
by Shri. B. J. Chaurasiya
Advocate

(62)

R. to D.R.
D. J. J.



Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR.

CRIMINAL APPEAL NO. 368 /1996.

Amratlal alias Ammilal son of Rangulal
Yadav, aged 40 years, Resident of
Village: Hardi, Police Station Sakti,
District Bilaspur (MP).

... APPELLANT
(IN JAIL)

Vs.

State of Madhya Pradesh

... RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2)
OF THE CODE OF CRIMINAL PROCEDURE.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

G.A. 368/96

सन् 200-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH: -</u> <u>HON'BLE MR. L.C. BHADOO AND</u> <u>HON'BLE MR. D.R. DESHMUKH, JJ.</u> <u>16-11-2005</u> Mr. Abhay Kumar Tiwari, counsel for the appellant. Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent. Oral judgment. By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality of the judgment of conviction and sentence dated 23rd January, 1996, passed by the Additional Sessions Judge, Sakti, camp at Janjgir, in Sessions Trial No.76/1994, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. for committing the murder of Jamuna Bai, sentenced him to undergo imprisonment for life. The case of the prosecution, in brief, is that on 11-10-1993 at 1.30 p.m. Phool Sai appeared before Police Station: Sakti and informed that "today he was returning to his village from Sakti at about 12 noon, when he was between Saraipali & Godhi, Santram Sahu met him on the way and informed him not to go to village and said that Amritlal Yadav has committed the murder of your wife and mother with the sword". Santram Sahu further said that he is going to village, "you go and report	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the matter to the Police", that is why he is reporting the matter. Phool Sai further stated that the accused used to call his wife witchcraft and on account of that on many occasions, he quarreled with her. On receiving this intimation, the Station House Officer, Police Station: Sakti registered the F.I.R. Ex.P-2 and left for the scene of occurrence. After giving notice to Panchas, he prepared the Panchanama of the body of Jamuna Bai Ex.P-5, thereafter, sent the body of Jamuna Bai to Primary Health Centre, Sakti, for post-mortem where Dr. P.R. Dewangan conducted post-mortem on the body of Jamuna Bai and prepared the report Ex.P-18. Dr. P.R. Dewangan (PW-11) noticed as many as seven incised wounds on various parts of the body of deceased Jamuna Bai out of which incised wound No.1 was over left side of the neck and parallel oblique in direction from just side of central line of front of the neck up to back part of the neck till cervical vertebral column region in the size of 11 cms. x 3.5 cms in centre x 1.5 cms. in centre. Cortical vertebral column was found cut partially. Fasciae, muscles, large & small blood vessels were also found cut, clotted blood was present. In the opinion of the doctor, the cause of death was shock and haemorrhage. While in police custody, the accused/appellant gave memorandum (Ex.P-8) under Section 27 of the Indian Evidence Act regarding the weapon of offence namely sword, which was seized, vide seizure memo Ex.P-5. The	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Investigating Officer also took into possession the plain soil and the blood stained soil from the scene of occurrence under Ex.P-6. He also took into possession the clothes of the accused under Ex.P-7 and prepared the site plan Ex.P-10 of the scene of occurrence. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Sakti, who in turn, committed the case to the Sessions Judge, Bilaspur, from where, learned Additional Sessions Judge, received the case for trial. The prosecution in order to prove the offence against the accused/appellant examined 15 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence, pleaded innocence and said that he has been falsely implicated in the crime. He also examined one witness namely Dorilal (DW-1) in his defence. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused in the manner mentioned in the earlier part of this judgment. We have heard learned counsel for the appellant and learned Panel Lawyer for the State/respondent, perused the evidence and judgment of the trial Court.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Learned counsel for the accused/appellant has not disputed the fact of the death of Jamuna Bai as homicidal in nature. Apart from that, from the evidence of Dr. P.R. Dewangan (PW-11), as per the post-mortem report and the evidence of Bharatlal (PW-8), eyewitness, the cause of death of Jamuna Bai was the result of the assault made by the accused/appellant with the sword. Therefore, the death of Jamuna Bai was homicidal in nature. As far as the involvement of the accused/appellant in committing the murder of Jamuna Bai is concerned, Bharatlal (PW-8) has stated in his evidence that on fateful day he went to the school where his teacher handed over him a piece of paper for delivering the same to the village Kotwar, when he was coming from the school to handover the said piece of paper to the Kotwar, and when he reached near the village tank he saw that accused Amratlal was attacking his mother with a sword. PW-8 has further stated that the accused attacked his mother on her head & hands as a result of which she fell down and the accused ran away from the scene of occurrence. At that time, his younger brother Yogesh Kumar also came there and informed him that the accused has also murdered their grandmother. PW-8 saw that his mother was breathing, he immediately went to the school and informed his teacher Ram Dayal. The above evidence of this witness (PW-8) has been corroborated by the evidence of Ram Dayal (PW-9), who has stated that he handed over	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	a piece of paper to Bharatlal for delivering the same to the village Kotwar, however, within 5-7 minutes Bharatlal returned to the school, he was weeping and stated that accused Amratlal has murdered his mother. Ram Dayal (PW-9) called one Santram, relative of Bharatlal, to whom also Bharatlal narrated the same story and Bharatlal stated that he has witnessed the fact of assaulting his mother by Amritlal and within five minutes Yogesh Kumar also came and said that accused Amritlal murdered their grandmother also and body is lying on the door of the house. The evidence of Bharatlal (PW-8), the eyewitness, stands corroborated by the medical evidence also. Dr. P.R. Dewangan (PW-11) has stated in his evidence that on 12-10-1993 at about 7 a.m. he conducted post-mortem on the body of Jamuna Bai, which was brought by Police Constable Anand Singh. He noticed seven incised wounds on the body out of which one was on the neck in the size of 11 cms. x 3.5 cms. x 1.5 cms. The cervical vertical column was cut up to half of the size, soft tissues, muscles, large & small intestine, and blood vessels were found cut. The second incised wound was on the left hand and the humerus bone was found cut. The third incised wound was on the left side of the chest in the size of 12 x 4 x 2 cms. and two ribs beneath the above injury were found cut. There was one incised wound on the left gluteal region in the size of 7 x 3 x 1 cms. There were two other incised wounds on the left leg in the size of 12 x	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G. A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	3 x 1 cms. both are of the same size. There was another incised wound on the knee of the left leg. Therefore, the evidence of Bharatlal (PW-8) stands corroborated by the above medical evidence. As per the evidence of the Investigating Officer, the weapon of offence, sword was recovered at instance of the accused. Defence has not been able to elicit any fact in cross-examination of Bharatlal (PW-8), the eyewitness, or Dr. P.R. Dewangan (PW-11) or the Investigating Officer, which makes the evidence of these witnesses doubtful or unreliable. In the circumstances, the trial Court has rightly accepted the above evidence and placed reliance on the above evidence. In view of the above legal and clinching evidence involving the accused/appellant in the commission of offence, we are of the considered opinion that the finding recorded by the trial Court regarding the involvement of the accused/appellant in committing the murder of Jamuna Bai does not require any interference by this Court. Learned counsel for the accused/appellant argued that this was the first offence and there was no intention of the accused to commit the murder of Jamuna Bai, as such, the offence does not travel beyond Section 304 Part-I of the I.P.C. But, we do not find any substance in this argument, because in order to ascertain the intention of the accused, conduct of the accused,	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	weapon of offence used by him, manner in which the injuries are inflicted and parts of the body where the injuries were inflicted are relevant factors to ascertain the intention of the accused. If we look into the evidence, the accused/appellant attacked Jamuna Bai with a sword, which is a deadly weapon, and if a person is attacked on neck by the sword then there is hardly any chance of survival of that victim. Moreover, the accused chosen neck for inflicting the injury and while attacking the deceased/victim, the accused was so brutal and merciless that he inflicted as many as seven incised wounds. Not only this, before attacking Jamuna Bai, the accused at the residence of Jamuna Bai had already committed the murder of Roopkunwar Bai, mother-in-law of Jamuna Bai. Therefore, in view of the above facts, it is established that the accused assaulted Jamuna Bai with a sword only with intention to commit her murder. As such, the finding of the trial Court that the accused/appellant assaulted Jamuna Bai with intention to commit her murder does not require any interference by this Court. In the circumstances, we are of the considered opinion that there is no merit in this appeal, same is liable to be dismissed and it is hereby dismissed. As far as the application filed on behalf of the accused/appellant that the sentences awarded in Sessions Trial Nos.76/1994 & 78/1994	

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 368/96 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	should be made concurrent, in view of the provisions of sub-section (2) of Section 427 of the Cr.P.C. the sentences are directed to be run concurrently. Parties are entitled for certified copy of this order. Sd/- L.C. BHADOO Judge	Sd/- Dilip Raosaheb Deshmukh Judge

Soma